

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 05-O-04235 (05-O-04732)
)	
MICHAEL GORDON YORK,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 89945,)	
)	
<u>A Member of the State Bar.</u>)	

On August 31, 2006, a Notice of Disciplinary Charges was filed against Respondent Michael Gordon York (Respondent) in case nos. 05-O-04235 (05-O-04732). This matter was initially assigned to the Honorable Richard A. Honn.

Thereafter, on January 5, 2007, Respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his mental health issues.

On January 16, 2007, Judge Honn filed an order referring this matter to the State Bar Court's Alternative Discipline Program (ADP) before the Honorable Richard A. Platel.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case nos. 05-O-04235 (05-O-04732) in early February 2007.

Respondent submitted a declaration on March 14, 2007, establishing a nexus between his mental health issues and his misconduct.

Respondent executed a Participation Plan with the LAP on June 20, 2007.

On October 5, 2007, the court executed both an order approving the parties' Stipulation and a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) which set forth the discipline which would be recommended to the Supreme Court if Respondent successfully completed the ADP and the discipline which would be recommended if Respondent was terminated from, or failed to successfully complete, the ADP. Respondent also executed the Contract and Waiver for Participation in the State Bar Court's ADP on October 5, 2007, and began his participation in the ADP on that date. The Stipulation, Contract and Confidential Statement were lodged on October 9, 2007.¹

The court held a status conference on February 10, 2010, at which time the court found that Respondent has successfully completed the ADP.² Accordingly, the Stipulation was filed on February 10, 2010, and this matter was submitted for decision on that date.

This matter was reassigned to the undersigned judge, effective May 3, 2010.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this two-client matter, Respondent stipulated that in both matters he: (1) intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California;³ and (2) failed to keep his client reasonably informed of significant developments in a matter in which he had agreed to provide legal services, in willful violation of Business and Professions Code section 6068, subdivision (m).

In aggravation, Respondent has a prior record of discipline, summarized briefly as follows: Effective February 2, 2002, Respondent was privately reproved, with conditions for 18

¹ On October 9, 2007, the court filed an order finding that Respondent is accepted into the ADP, and the start date of Respondent's participation in the ADP is October 5, 2007.

² Following the February 10, 2010, ADP status conference, the court filed an order on February 11, 2010, finding that Respondent has successfully completed the ADP.

³ Unless otherwise indicated, all further references to rule(s) are to this source.

months, in case no. 99-O-12900 for a violation of rule 3-110(A). That is an aggravating factor. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁴, std. 1.2(b)(i).) As additional aggravating circumstances, Respondent stipulated that his misconduct harmed significantly a client, the public or the administration of justice (std. 1.2(b)(iv)), and that his current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct (std. 1.2(b)(ii)).⁵ There were no mitigating circumstances at the time of the stipulation. The stipulation, however, reserved to Respondent the ability to receive mitigating credit in the event he participated successfully in the ADP.

The parties' stipulation as to facts and conclusions of law, including the court's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulation as to facts and conclusions of law set forth the factual findings, legal conclusions, and aggravating circumstances in this matter.

Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established, through clear and convincing evidence, that he/she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186, 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) At the time that Respondent engaged in misconduct, he was suffering from mental health issues, and the court has found a nexus between Respondent's mental health issues and his misconduct in this matter. Respondent contacted the LAP on January 5, 2007, to assist him with his mental health issues and executed a Participation Plan

⁴ All further references to standard(s) or std. are to this source.

⁵ While the court does find multiple acts of misconduct, the court does not find a pattern of misconduct.

with the LAP on June 20, 2007. Thereafter, Respondent participated successfully in the LAP, and the LAP issued a certificate of one-year participation dated January 20, 2010, which reflects that, for at least one year prior to this date, Respondent has satisfied the requirements set forth in the LAP Evaluation/Participation Plan and has maintained mental health stability and has participated successfully in the LAP.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the certificate of one-year participation in the LAP, qualify as clear and convincing evidence that Respondent no longer suffers from the mental health issues which led to his misconduct. Accordingly, it is appropriate to consider Respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing the parties' briefs on the issue of discipline, and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating circumstances in this matter, and Respondent's declaration regarding the nexus between his mental health issues and his misconduct, the court advised the parties of the alternative disciplines (so-called high/low disciplines) which would be recommended to the Supreme Court in the event Respondent successfully completed the ADP or, in the alternative, failed to do so. In

particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.4(b) and 2.6 and certain case law cited in the parties' discipline briefs, including *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267; *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608; and *Butler v. State Bar* (1986) 42 Cal.3d 323.

After agreeing to the alternative high/low disciplines which this court then stated that it would recommend to the Supreme Court if Respondent enrolled in the ADP, Respondent executed the Contract to participate in the ADP, and Respondent's period of participation in the ADP commenced.

Because Respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below, contained in the Confidential Statement.

DISCIPLINE

Recommended Discipline

It is hereby recommended that respondent **Michael Gordon York**, State Bar Number 89945, be suspended from the practice of law in California for one (1) year, that execution of that period of suspension be stayed, and that he be placed on probation⁶ for a period of two (2) years subject to the following conditions:

- a. During the probation period, Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
- b. Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

⁶ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

- c. Within thirty (30) days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request;
- d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

- e. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions; and
- f. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of Respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.⁷

⁷ It is not recommended that Respondent be ordered to provide to the Office of Probation proof of attendance at State Bar Ethics School and passage of the test given at end of that course,

At the expiration of the period of probation, if Michael Gordon York has complied with all conditions of probation, the one (1) year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Michael Gordon York be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. It is further recommended that Michael Gordon York be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court

as Respondent provided proof to the Office of Probation of attendance at and passage of such test during the first six months of his participation in the ADP.

and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: May ____, 2010

DONALD F. MILES
Judge of the State Bar Court